Remarks

In response to the Office Action dated July 17, 2007, Applicants respectfully request reconsideration based on the above claim amendment and the following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance. Claims 18-20 have been amended merely to correct issues of form and should not be cause for a new search.

Interview Summary

A telephone interview was conducted on October 09 between Examiner Fearer and the undersigned. During the interview it was agreed that Padavano does not describe a first and second network in communication via a third network. The Examiner indicated that a search for a new reference would be required.

Claim Objections

In the Office Action, claim 19 has been objected to as containing typographical errors. Claim 19 has been amended to correct the noted typographical errors. As such, the objection may be withdrawn.

103 Rejections

Claims 1-10 and 16-17 are rejected under 35 USC 103(a) as being unpatentable over Padovano (U.S. Pat. 6,606,690) in view of Nishimura (U.S. Pat. 7,162,597). Claim 11 is rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura and further in view of Mann (U.S. Pat. 6,963,590). Claim 12-15 are rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura and further in view of Johnson (U.S. Pat. App. 20020116452). Claim 18 is rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura and further in view of Wisner (U.S. Pat. App. 20020163810). Claims 19-20 are rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura and further in view of Borthakur (U.S. Pat. App. 7,191,225).

<u>Claims 1-10, 16-17</u>

Independent claim 1 recites, in pertinent part:

"[a]n enterprise data backup and recovery system, comprising:
a first network and a second network in communication through a third network, the first network comprising: a first processor layer…wherein, the first and second storage layers are shared by the first and second networks via the third network; and
wherein, information stored in the first storage layer is transferred to the second storage layer via the third network under the control of the first processor layer."

The Office Action rejects independent claim 1 by asserting that Padovano describes most of the claim elements but concedes that Padovano fails to describe an enterprise backup and recovery system. Applicants respectfully traverse the rejections.

The subject matter described in Padovano concerns accessing storage devices in a storage area network ("SAN") as if they were Network Attached Storage ("NAS"). (Abstract). Padovano describes reassigning a portion of a SAN in communication with a first network to a NAS server over a second network so that the reassigned portion of the SAN appears as a NAS to the users of the second communication network. (Abstract, Col. 2, l. 31-34). In effect, Padovano is dividing single SAN into a SAN accessed by a first network 118 and a NAS accessed by the second network 116 (FIG. 2) or a second and third network 208 (FIG. 3B).

Applicants respectfully assert that Padovano does not describe "…a first network and a second network in communication through a third network…" Similarly, Padovano also fails to describe that "…the first and second storage layers are shared by the first and second networks via the third network; and wherein, information stored in the first storage layer is transferred to the second storage layer via the third network under the control of the first processor layer."

On page 3 and 4 of its rejection, the Office Action explicitly equates the recited first network to first data communication network **118**, the recited second network to the second data communication network **116** and the recited third network to network **208**. (See also, FIG 3B). Applicants respectfully assert that in Padovano, the first **118** and second **116** communication data networks are not in communication through the third network **208** as asserted in the Office Action. The first **118** and the second **116** communication data networks are in communication through SAN Server **302**, and not a

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third network. Further, Applicants note that on page 3, the Office Action explicitly equates SAN server **302** to the recited first storage network layer ("SANL"). **SAN Server 302, therefore, is not a recited third network**. As such, Padavano is not describing "…a first network and a second network in communication through a third network…" In fact, Padovano clearly describes that each of the first **118**, second **116** and third networks **208** are in communication with storage appliance **210**/SAN **302**. (FIG. 3B; Col. 10, l. 54-67).   As such, Padavano is describing that the first network **118** and the second network **116** are <u>NOT</u> in communication through the third network **208**.

Since SAN Server **302** is not a third network, Padavano fails to describe a first network and a second network in communication through a third network. As such, Padavano fails to describe the subject matter asserted to Padavano for at least this reason. Similarly, Padavano fails to describe that the first and second storage layers are shared by the first and second networks via the third network.   As mentioned, Padavano does not describe anything being shared by the first and second networks via a third network **208**.

Therefore, because Padovano does not describe a first network and a second network in communication through a third network, Padavano does not describe that the first and second storage layers are shared by the first and second networks via the third network; does not describe that information stored in the first storage layer is transferred to the second storage layer via the third network under the control of the first processor layer; or describe that information stored in the first storage layer is transferred to the second storage layer via the third network under the control of the first processor layer, because Padavano does not describe a third network as recited. Therefore, Padovano does not describe the subject matter asserted to Padovano by the Office Action.

Nishimura fails to cure the above discrepancies of Padovano. Nishimura is concerned with a back up system that backs up data in two storage forms. Nishimura only describes communication with a single network. Therefore, Nishimura also fails to cure the above discrepancies of Padovano since Nishimura does not describe a first network and a second network in communication through a third network, does not describe that the first and second storage layers are shared by the first and second networks via the third network; and does not describe that information stored in the first storage layer is transferred to the second storage layer via the third network under the

control of the first processor layer.

Similarly none of the other secondary references cures the above discrepancies in the combination of Padovano and Nishimura. Bothakur concerns itself with providing access to a single node storage stack by a multi-node file system. Johnson concerns maximizing bandwidth performance using a switch based computing system. Mann is concerned with multiplexing audio, visual and text data via a fat pipe and Wisner concerns itself with communications between two data centers via a switch fabric. None of Bothakur, Johnson, Wisner or Mann describes a first network and a second network in communication through a third network, or describe that the first and second storage layers are shared by the first and second networks via the third network; or describe that information stored in the first storage layer is transferred to the second storage layer via the third network under the control of the first processor layer. Therefore, none of Johnson, Mann, Wisner or Bothakur cures the above discrepancies of Padovano in view of Nishimura discussed above.

Since the combination of Padovano and Nishimura fails to describe each and every claim element, the Office Action has failed to establish a prima facie case of obviousness and independent claim 1 is allowable over the combination of Padovano and Nishimura for at least this reason. Claims 2-20 depend from an allowable independent claim 1 and are allowable for at least theses same reasons.

Claims 11-15 and 18-20

Each of claims 11-15 and 18-20 depends from independent claim 1. The Office Action rejects dependent claims 11-15 and 18-20 under 35 U.S.C. 103(a) as being unpatentable over Padavano in view of Nishimura and variously in view of Mann, Johnson, Wisner or Borthakar.

As described above in regards to independent claim 1, the combination of Padavano and Nishimura fails to describe the subject matter asserted to the combination of Padavano and Nishimura. As none of Mann, Johnson, Wisner or Borthakar cures the deficiencies of the combination of Padavano and Nishimura, dependent claims 11-15 and 18-20 are allowable for at least the same reasons.

Conclusion

In view of the foregoing amendments and remarks, this application is now in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is invited to call the Applicants' attorney at the number listed below.

No Fee is believed to be due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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